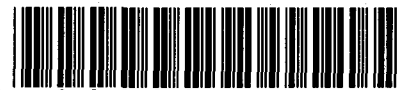


ORIGINAL



0000083846

BEFORE THE ARIZONA CORPORATION COMMISSION

JAMES M. IRVIN  
Chairman  
TONY WEST  
Commissioner  
CARL J. KUNASEK  
Commissioner

RECEIVED RECEIVED  
AZ CORP COMMISSION  
MAR 2 11:33 AM '99  
DOCKETED  
MAR 02 1999

DOCUMENT CONTROL

DOCKETED BY

M1/

IN THE MATTER OF RULES TO  
ADDRESS SLAMMING AND OTHER  
DECEPTIVE PRACTICES.

Docket No. RT-00000J-99-0034

MEMORANDUM IN SUPPORT OF  
APPLICATION FOR EMERGENCY  
RULEMAKING

U S WEST Communications, Inc. ("U S WEST"), by its  
undersigned attorneys, hereby submits the following reply  
memorandum in support of its application for an emergency  
rulemaking.

INTRODUCTION

On December 17, 1998, the Federal Communications Commission  
("FCC") issued rules governing the steps that carriers must take  
before changing a customer's telephone service. These rules were  
published in the Federal Register on February 16, 1999 and, with  
the exception of a few selected rules, will become effective on  
April 29, 1999. All of the rules will be effective no later than  
May 19, 1999.

In this proceeding, U S WEST requests that the Arizona  
Corporation Commission (the "Commission") adopt the FCC's anti-  
slamming rules on an emergency basis. Slamming has been a problem  
for some time but it only recently became apparent just how often  
slamming occurs in the intraLATA toll market. Based on a survey

1 of over 75,000 former customers completed shortly before U S WEST  
2 filed its application, over 65% of the customers who changed  
3 their intraLATA carrier did not even know that the change had  
4 occurred. Carriers such as AT&T and MCI have seized on consumer  
5 confusion and apparently interpret a customer's decision to  
6 change interLATA carriers to be a change of intraLATA carrier as  
7 well.

8 AT&T and MCI oppose emergency adoption of the FCC's rules  
9 based on a hodgepodge of disingenuous and inconsistent arguments.  
10 They claim to be opposed to slamming yet resist rules that will  
11 prevent it and provide customers with a meaningful remedy. They  
12 claim that they comply with the FCC anti-slamming rules but  
13 suggest that they will have to change their marketing materials  
14 if the rules are adopted. They oppose adoption of the rules now  
15 but admit that rules will soon become effective anyway.

16 The arguments AT&T and MCI advance are last ditch attempts  
17 to shelter their slamming activities. What they describe as  
18 competition is in fact deception and it should not be tolerated.  
19 For the reasons that follow, the Commission should adopt the  
20 FCC's anti-slamming rules on an emergency basis.

21 . . . .

22 . . . .

23 . . . .

24 . . . .

25 . . . .

26 . . . .

1 **ARGUMENT**

2 Expedited adoption of the FCC's anti-slamming rules is  
3 necessary because slamming has become an enormous problem in the  
4 intraLATA toll market. The FCC's rules have now been published in  
5 the Federal Register and will soon become effective. The  
6 Commission clearly has the authority to adopt and enforce these  
7 rules in the interim.

8 **An Emergency Exists Which Justifies**  
9 **Implementation of the FCC's Anti-Slamming Rules**

10 U S WEST filed this application because the need for  
11 emergency action is really beyond dispute. Slamming is so  
12 extensive in the intraLATA toll market that immediate Commission  
13 action is required.

14 U S WEST recently completed a survey of more than 24,000  
15 former intraLATA toll customers in Arizona and found that 64.2%  
16 of the customers whose intraLATA toll provider had been changed  
17 did not even know it had happened. The situation is equally bad  
18 in other states in U S WEST's territory. Of the more than 75,000  
19 customers surveyed, over 65% did not understand that their  
20 intraLATA toll provider had been changed. Attached as Exhibit A  
21 is the Affidavit of John Peketz describing the survey methodology  
22 and attaching the scripts used in the survey.

23 In their responses to U S WEST's application, AT&T and MCI  
24 question the survey's methodology, ask questions about whether  
25 the survey had statistical validity, and imply that the survey  
26 was somehow not representative or reliable. However, neither

1 carrier introduces any meaningful evidence to contradict the  
2 survey results. In truth, the U S WEST survey is very reliable.

3 First and foremost, the survey was comprehensive. Over  
4 75,000 former U S WEST intraLATA toll customers were questioned.  
5 To be sure, this is not a case where a mere handful of customers  
6 were surveyed in order to draw conclusions about PIC changes  
7 generally. The survey was so extensive that its conclusions  
8 carry special weight. Moreover, marketing representatives of  
9 U S WEST followed a standardized script in which customers were  
10 first asked if they were aware that their intrastate long  
11 distance provider had been changed. Over 65% of the customers in  
12 Arizona and other states reported that they were not even aware  
13 that a change had been made.

14 U S West filed applications for emergency rules in 11 of its  
15 14 states. The Montana Public Service Commission has already  
16 granted U S WEST's requested relief. In its order adopting the  
17 FCC's rules, the Montana Commission reached the following  
18 conclusions:

19 The practice of making unauthorized changes to a  
20 customer's long distance carriers (slamming) is  
21 prevalent and should not be tolerated by the  
22 commission. Until recently, such changes affected only  
23 interLATA long distance services. However, the  
24 commission required U S WEST to implement intraLATA  
25 dialing parity as of February 8, 1999, and with this  
26 implementation, there is considerable risk that the  
same practices will become widespread in the intraLATA  
long distance markets.

25 The Federal Communications Commission has adopted  
26 new rules that address slamming in both the interLATA

1 and intraLATA long distance markets. These rules will  
2 become effective 70 and 90 days following publication  
3 in the Federal Register. The delay in the effective  
4 date for these rules will cause harm to Montana  
5 customers.

6 \*\*\*

7 The high probability of widespread slamming in the  
8 Montana intraLATA long distance market constitutes  
9 imminent peril. Emergency action is required to deter  
10 slamming, to protect consumers from unauthorized  
11 changes in their preferred carriers, and to ensure that  
12 competition in the interLATA, intraLATA and local  
13 markets is fair and not fraudulent or deceptive.  
14 Without these emergency rules, the public welfare may  
15 be substantially harmed.

16 (Montana Order, ¶ 1) (emphasis added).

17 In a feeble attempt to contradict the survey results, AT&T  
18 argues that it checked a sample of 56 customers identified by  
19 U S WEST as customers that had been slammed. AT&T claims that it  
20 checked its customer records and that it does not believe that  
21 any of the customers identified had been slammed. However, AT&T  
22 submits no evidence whatsoever to demonstrate that these  
23 customers had been informed of their alternatives concerning  
24 selection of an intraLATA toll provider or that the customers  
25 knowingly decided to switch providers. U S WEST has requested  
26 support from AT&T but to date none has been provided.

AT&T and MCI also observe that the FCC did not adopt its  
rules on an emergency basis. While that may be true, it is also  
true that U S WEST's survey results were never presented to the  
FCC for consideration because the survey had not been completed  
when the FCC issued its rules. Moreover, one cannot conclude

1 that the absence of a national emergency means that an emergency  
2 does not exist in Arizona. Indeed, the survey results belie such  
3 a conclusion. When asked, more than 64% of the 24,000 Arizona  
4 customers surveyed by U S West claimed that they were not even  
5 aware that their intraLATA provider had been changed.

6 The final point that AT&T and MCI make is that U S WEST has  
7 proposed emergency rules where it may lose or is losing business  
8 to competition. However, it could just as easily be said that  
9 AT&T and MCI oppose the emergency rules because they seek to gain  
10 business by slamming, not by competition. The point both AT&T  
11 and MCI obscure is that the FCC's rules are carrier neutral. The  
12 rules apply to all carriers including U S WEST.

13 One of the primary goals of the FCC's anti-slamming rules is  
14 to promote competition while at the same time respecting customer  
15 choice. "Slamming occurs when a company changes a subscriber's  
16 carrier selection without that subscriber's knowledge or explicit  
17 authorization." FCC Anti-Slamming Order, ¶¶ 1 & 33. It is a  
18 form of deception, not a type of lawful competition. Delay in  
19 adoption of the FCC's rules creates an incentive for carriers who  
20 engage in the practice to accelerate their slamming activities to  
21 exploit the fact that the FCC's rules are not yet effective. The  
22 Commission should eliminate that incentive by adopting the FCC's  
23 anti-slamming rules on an emergency basis.

24 . . . .

25 . . . .

26 . . . .

1 The FCC's Anti-slamming Rules Are Final;  
2 Implementation of the Rules Is Not Premature

3 The FCC adopted its anti-slamming rules after affording  
4 interested parties with notice of its rulemaking proceeding and  
5 with the opportunity to comment on proposed rules. While it is  
6 possible that the FCC may adopt additional rules, the rules that  
7 have been issued are final and will become effective. At that  
8 time, all telecommunications carriers will be required by law to  
9 abide by the rules. 47 U.S.C. §258.

10 The FCC promulgated its rules following the procedures  
11 prescribed in the Administrative Procedure Act (the "APA"). The  
12 APA requires that notice of proposed rulemaking be published in  
13 the Federal Register, that parties be afforded an opportunity to  
14 participate in the rulemaking, and that any rule adopted then be  
15 published in the Federal Register. 5 U.S.C. §553.

16 The rules are already final and will become effective at the  
17 end of April. The FCC issued notice of proposed rulemaking in  
18 1997 and gave AT&T and MCI as well as other interested parties  
19 the opportunity to participate in the rulemaking. AT&T and MCI  
20 availed themselves of that opportunity. Indeed, AT&T claims that  
21 it "actively and extensively participated in the FCC's proceeding  
22 to develop its anti-slamming rules."

23 If the FCC issues additional rules, the Commission can  
24 decide at that time whether to adopt the new rules on an  
25 expedited basis. Nevertheless, since both AT&T and MCI have  
26 stated that they intend to abide by the rules that have already

1 been adopted, the Commission should require them to honor their  
2 commitment now.

3 **The Commission Has Authority**  
4 **To Adopt and Enforce Emergency Rules**

5 The Commission clearly has the authority to adopt the FCC's  
6 anti-slamming rules on an emergency basis. MCI concedes as much  
7 when it states that it is not opposed to expedited consideration  
8 of U S West's application. Only AT&T opposes expedited adoption  
9 of the rules.

10 Section 41-1026 of the Arizona Revised Statutes provides  
11 that an agency may adopt a rule without following the notice  
12 prescribed by sections §§41-1021 and 41-1022...if the agency finds  
13 that the rule is necessary as an emergency measure. See A.R.S.  
14 § 41-1026. Certain other procedures may have to be followed  
15 before the rule will become effective but there is no question  
16 that an agency may adopt such a rule in the first instance.

17 In a blatant stall tactic, AT&T suggests that the Commission  
18 should follow the normal rulemaking procedures before adopting  
19 the FCC's anti-slamming rules. The FCC's rules have already been  
20 through such a process and as AT&T points out in its motion, AT&T  
21 fully participated in the rulemaking proceedings before the FCC.  
22 Indeed, AT&T states that it has zero tolerance for "slamming" and  
23 that it intends to abide by the FCC's rules. AT&T should put its  
24 money where its mouth is. If AT&T really does oppose slamming  
25 and in fact intends to comply with the FCC's rules, it would be  
26

1 supporting U S WEST's application. AT&T's opposition is  
2 revealing evidence of AT&T's true intentions.

3 CONCLUSION


4 Emergency adoption of the FCC's anti-slamming rules is  
5 necessary because slamming has become a particularly severe  
6 problem in the intraLATA toll market. The FCC's rules have now  
7 been published in the Federal Register and will soon become  
8 effective. The Commission clearly has the authority to adopt and  
9 enforce these rules.

10 RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of March, 1999.

11 U S WEST COMMUNICATIONS, INC.  
12 Thomas M. Dethlefs  
13 Senior Attorney  
14 1801 California St., Suite 5100  
15 Denver, Colorado 80202  
16 (303) 672-2948

17 and

18 FENNEMORE CRAIG

19 By:   
20 Timothy Berg  
21 Theresa Dwyer  
22 3003 North Central Avenue, Suite 2600  
23 Phoenix, Arizona 85012-2913  
24 Attorneys for U S WEST Communications,  
25 Inc.

26 ORIGINAL and ten copies of the  
foregoing filed this 2<sup>nd</sup> day of  
March, 1999, with:

27 Docket Control  
28 ARIZONA CORPORATION COMMISSION  
29 1200 West Washington  
30 Phoenix, Arizona 85007

1 COPY of the foregoing hand delivered  
this 2<sup>nd</sup> day of March, 1999, to:

2 Paul Bullis, Chief Counsel  
3 Legal Division  
4 ARIZONA CORPORATION COMMISSION  
5 1200 West Washington  
6 Phoenix, Arizona 85007

7 Ray Williamson, Director  
8 Utilities Division  
9 ARIZONA CORPORATION COMMISSION  
10 1200 West Washington  
11 Phoenix, Arizona 85007

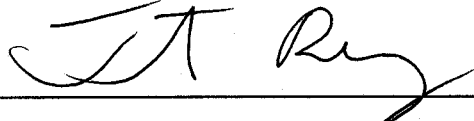
12 COPY of the foregoing mailed this  
13 2<sup>nd</sup> day of March, 1999, to:

14 Tom Campbell  
15 Lewis & Roca  
16 40 North Central  
17 Phoenix, Arizona 85004

18 Thomas Dixon  
19 MCI WorldCom, Inc.  
20 707 17<sup>th</sup> Street, Suite 3900  
21 Denver, Colorado 80202

22 Richard S. Wolters  
23 Maria Arias-Chapleau  
24 AT&T Communications of the Mountain States, Inc.  
25 1875 Lawrence Street, Suite 1575  
26 Denver, Colorado 80202

27 Stephen Gibelli  
28 Residential Utility Consumer Office  
29 2828 North Central Avenue, #1200  
30 Phoenix, Arizona 85004

31   
32 \_\_\_\_\_

A

**AFFIDAVIT  
OF  
JOHN PEKETZ**

State of Arizona                     )  
  ) ss.  
County of Maricopa                 )

The undersigned, John Peketz, being first duly sworn, deposes and says that:

1. He is employed by U S WEST Communications, Inc. (the "Company") as a Director of Consumer Toll Services.
2. In his capacity as a Director of Consumer Toll Services for the Company, he is authorized to make and give this affidavit.
3. The factual information set forth herein has been developed at and under his direction and supervision, so that he knows and understands the facts and circumstances that are described herein.
4. The state regulatory commissions in Arizona, Minnesota, New Mexico, Utah, and Wyoming established 1+ presubscription for intraLATA service prior to August 1, 1998, within their respective states.
5. Commencing in 1998, and acting at my direction, the Company employed West Teleservices to solicit residential customers who had changed their 1+ presubscribed carrier for intraLATA toll service from the Company to another carrier. As part of the telemarketing script, and after identifying the called party as one who was responsible for the telecommunications decisions, the telemarketing representatives asked if the person was aware that the provider of their Local Long Distance service had been changed from the Company to another carrier. The following table contains the results of those questions through January 31, 1999:

State Start Date	Arizona 6/29/98	Minnesota 8/10/98	New Mexico 11/3/98	Utah 8/10/98	Wyoming 6/29/98
Aware	9,137	3,557	4,690	10,698	2,645
Not Aware	17,252	9,466	5,944	19,855	3,730
No Response	235	82	33	269	41
Total Response	26,624	13,105	10,667	30,822	6,416

6. Attached hereto as Schedule A is the opening scripting for the telemarketing contacts used to develop the information described in paragraph 5, above. The scripting was provided to West Teleservices who was employed by U S WEST to contact customers and solicit them in accordance with the scripts. U S WEST personnel regularly monitored individual customer contacts by the telemarketing firms to ensure that the scripting was followed verbatim.

7. U S WEST provided the customer contact list to the telemarketing firms. The lists were provided, consistent with applicable rules, from the list of customers who had ended their 1+ intraLATA service with U S WEST. U S WEST selected, from those lists, those accounts that met its marketing criteria, including previous use of U S WEST's intraLATA toll service, credit standards, and toll restriction indicators.

8. Attached hereto as Schedule B is the script for the third party verification used to verify the customers authorization to change their 1+ intraLATA service to U S WEST Communications, Inc.

Further your affiant sayeth not.

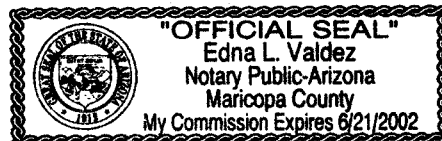
  
John Peketz

Subscribed and sworn to before me this 2nd day of March, 1999, by John Peketz.

  
Notary Public

My Commission Expires:

\_\_\_\_\_



<b>USWEST WINBACK SCRIPT</b>
------------------------------

<b>OPENING</b>
----------------

Hello, this is (TSR) calling for US WEST Communication, your local phone company.

May I speak with Mr./Ms. <LOAD NAME> ?

**If Available:** (GO TO INTRODUCTION)

**If Unavailable:** Hello, this is (TSR) calling for US WEST, your local phone company. May I ask, are you authorized to make decisions regarding your phone service?

**If Yes:** (GO TO INTRODUCTION)

**If No:** (NOT WHEN HE/SHE WILL BE AVAILABLE TO BE CALLED BACK)

**If "Is this concerning long distance?":**

THIS IS US WEST, YOUR LOCAL PHONE COMPANY AND WE'RE CALLING ABOUT YOUR LOCAL LONG DISTANCE.

(GO TO INTRODUCTION. SKIP FIRST SENTENCE)

<b>INTRODUCTION</b>
---------------------

Mr./Ms. <LOAD NAME>, this is (TSR) calling from US WEST, your local phone company. Our records are indicating that you are no longer with US WEST for your local long distance service. By local long distance, we mean all your calls (*USE CITY PAIRS*)

Were you aware of this change?

**If Non-Published:** Mr./Ms. <LOAD NAME>, this is (TSR) calling from US WEST Communications, your local phone company. We're calling to let you know about our terrific offer for your local long distance needs. I'd like to tell you more about it. Our records are indicating that you are no longer with US WEST for your local long distance service. By local long distance, we mean all your calls (*USE CITY PAIRS*)

Were you aware of this change?

**CITY PAIR EXAMPLES**

AZ: Phoenix to Flagstaff or Yuma, Tucson to Nogales or Douglas service. By local  
 MN: Duluth to Grand Rapids, Minneapolis to Sandstone, Caledonia to Redwood Falls  
 NM: Albuquerque to Las Cruces or anywhere in the state  
 WY: Casper to Alpine or any where in the state  
 UT: Salt Lake to St.George or any where in the state

## THIRD PARTY VERIFICATION (TPV) SCRIPT

### (ACCESS VOICELOG)

**Recording System:** *Welcome to the VoiceLog telephone confirmation system. Please press 1 to continue. The VoiceLog system provides independent documentation of the information contained in this telephone call. Please enter your 10-digit phone number followed by the # sign. (ENTER CUSTOMER'S BTN FOLLOWED BY THE #) You have entered (RECORDING SYSTEM REPEATS CUSTOMER'S BTN). If this is correct, please*

*press the 1 key. After the tone, your call will be recorded until you hit the # sign on the telephone. Please begin speaking after the tone. (WAIT FOR THE TONE)*

Mr./Ms \_\_\_\_\_, I can start the confirmation recording, and this is for legal and quality reasons....Okay?

**1. If Speaking to Label person:** I show the billing last name as \_\_\_\_\_, the billing first name as \_\_\_\_\_. (and your Middle Initial as \_\_\_\_\_)

**If Speaking To Non-Label Person:** Now, Mr./Ms \_\_\_\_\_, you are placing this order for Mr./Ms (LABEL PERSON), correct?....

And I am speaking with (CONTACT NAME)

**2.** Just to confirm, you have selected to change your local long distance company to U S WEST on your account associated with (REPEAT PHONE NUMBER), is that correct? And

**3. If Customer is ordering a calling plan:**

<insert>

There is no charge for selecting U S WEST, and your service will be set up in eight business days on (CALCULATE 8 BUSINESS DAYS OUT FOR THE INSTALLATION DATE).

**IF Calling Cards:** And of course, you will receive \_\_\_\_\_ <insert # of cards offering> of our complimentary U S WEST Calling Cards.

**4.** Now, Mr./Ms \_\_\_\_\_, for identification purposes, I need your birthday, just month and day is fine or your mother's maiden name. (WAIT FOR CUSTOMER'S RESPONSE).